

## ADA FREQUENTLY ASKED QUESTIONS

1. **Question: Do you know if local agencies can process their design exceptions on the ADA requirements or would they have to comply with the ADA requirements? Reading Chapter 11 of the LAPM, it appears the local agencies can have some variations from the federal standards as long as it is documented in the project file. However, variations from state standards have to be approved by the Division of State Architect.**

Answer: The following is from the latest revisions of Chapter 11 of the LAPM (pending final approval) which points out that local agency projects with pedestrian facilities using State funds must be reviewed by **DSA (in red)** and the deviations allowed by **ADAAG (in green)** for local agency projects with pedestrian facilities. We would not be involved in either of these unless the pedestrian facilities using State funds happen to be on the State Highway System, then Caltrans, instead of DSA, can review and approve the local agency project with pedestrian facilities as part of the encroachment permit process.

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ADA Compliance of Project Plans and Specifications State and local governments regardless of whether they receive federal funds are required to comply with the federal ADA Standards (ADAAG at: <http://www.accessboard.gov/adaag/html/adaag.htm>), Title 24 of the California Code of Regulations which contain California building regulations, or local codes whichever provides the greatest access. Private-funded improvements within the public right of way are also required to comply with, whichever code offers the greatest access or protections to individuals with disabilities. The State of California has adopted regulations specifying that all buildings, structures, sidewalks, curbs and related facilities constructed in California by the use of state, county or municipal funds, or the funds of any political subdivision of the State; shall be accessible to and usable by persons with disabilities. The California Division of the State Architect (DSA), under the Department of General Services, is given responsibility for developing regulations and standards to ensure full accessibility. The intent of these regulations and standards are to prescribe no lesser a standard of accessibility or usability than provided by the federal ADA standards.

California Government Code Section 4450 and subsequent sections are designated as "Chapter 7. Access to Public Buildings by Physically

Handicapped Persons.” Section 4454 entitled “Approval of Plans and Specifications” contains the requirement that:

“Where state funds are utilized for any building or facility subject to this chapter, or where funds of counties, municipalities, or other political subdivisions are utilized for the construction of elementary, secondary, or community college buildings and facilities subject to this chapter, no contract shall be awarded until the Department of General Services has issued written approval stating that the plans and specifications comply with the intent of this chapter.”

Local agency plans and specifications with pedestrian facilities to be constructed with state funds (federal funds are not considered state funds) must be reviewed and approved by DSA. The local agency will obtain DSA approval of the plans and specifications and pay fees directly to DSA. Regional offices can be found at this website:  
<http://www.dsa.dgs.ca.gov/UniversalDesign/default.htm>

Local Assistance Procedures Manual Chapter 11 Design Standards ADAAG Exceptions. The following provisions mentioned in part, are contained in ADAAG, Appendix A of 28 CFR, Part 36 and are available for the use of local agencies:

## Paragraph 2. General

2.2. Equivalent Facilitation. Departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.

Paragraph 4.1.1 Application (5) General Exceptions. (a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevents the incorporation of accessibility feature. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

Paragraph 4.1.6 Accessible Buildings: Alterations (1) General. (j) Exception: In alteration work, if compliance with 4.1.6 is technically infeasible, the alteration shall provide accessibility to the maximum

extent feasible. Any elements or features of the building or facility that are being altered and can be made accessible, shall be made accessible within the scope of alteration. Technically Infeasible means with respect to an alteration of a building, or a facility that has little likelihood of being accomplished because of existing structural conditions that would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other exiting physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

#### Encroachment Permits

Should an encroachment permit from Caltrans be needed by a local agency for a project, ADA compliance of the plans and specifications, in accordance with Caltrans Design Information Bulletin 82-01 will be required before an encroachment permit is issued.

**2. Question: Why are the California Building Standards Code (Title 24) requirements more stringent than the federal Americans with Disabilities Act (ADA) requirements?**

Answer: The regulations in California were developed by the Division of the State Architect, Access Compliance, eight years before the United States Congress passed the ADA. The current California Building Standards Code was written to provide a single code which would meet all of the most stringent requirements of the original California Building Standards Code, as well as the 1991 Federal Fair Housing Amendments Act and the Americans with Disabilities Act Accessibility Guidelines.

**3. Who is the building official? (Title 24)**

The "building official" is the officer or other designated authority charged with the administration and enforcement of this code, or the building official's duly authorized representative in accordance with state law. Local cities and counties have building officials who regulate construction in their jurisdiction. State funded construction on state property is often regulated by a state agency, such as the Division of the State Architect. Sometimes public construction has more than one building official — each has separate jurisdictional oversight responsibilities.

**4. Can I get a waiver from the access requirements?**

The California Building Standards Code says that you must get a final determination from the local building official that your project has an unreasonable hardship. This is rarely granted for new construction. Existing buildings undergoing alteration are sometimes allowed to depart from the literal requirements of the building code only when equivalent facilitation is provided.

**5. What is "equivalent facilitation"? (Title 24)**

"Equivalent facilitation" is an alternate means of complying with the literal requirements of these standards and specifications that provides access in terms of the purpose of these standards and specifications. In determining equivalent facilitation, consideration shall be given to means that provide for the maximum independence of persons with disabilities while presenting the least risk of harm, injury, or other hazard to such persons or others.

**6. Can DSA help me settle a dispute I am having with my local building inspector who says I must provide access to my restaurant? (Title 24)**

No, because DSA is a separate jurisdiction. By law, only the local building authority can make a final determination as to code enforcement issues.